No. 80-710

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, *et al.*,

Petitioners,

v.

LOCAL 334, UNITED ASSOCIATION ETC., *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS [1]

In *Retail Clerks* v. *Lion Dry Goods*, 369 U.S. 17, the respondent argued that the term "contracts" as used in

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[1] Throughout this Reply the following abbreviations will be used: "Pet. Br." will refer to the Brief of Petitioners in this case; "Resp. Br." will refer to the Brief for Respondent; "J.A." will refer to the Joint Appendix; "Pet. App." will refer to the Appendix to the Petition for Certiorari; "LMRA" will refer to the Labor Management Relations Act of 1947, and "NLRA" will refer to the National Labor Relations Act, which was amended by Title I of the LMRA; "Leg. Hist." will refer to the Legislative History of the Labor-Management Relations Act of 1947. (G.P.O. 1948)

the first clause of § 301(a) of the LMRA should be read to mean "collective-bargaining contracts." (See *id.* at 25.) This Court, noting that the "words of § 301(a) require no such narrow construction as is suggested; rather, they negate it" (*id.*), unanimously rejected that interpretation of § 301(a). (See *id.* at 25-28.)

Respondent in this case, embracing a position accepted by only one of the ten Courts of Appeals which have considered the present question,[2] presents a parallel argument for limiting the word "contracts" in the second clause of § 301(a). Respondent contends that contracts means "agreements between *unrelated* labor organizations" (Resp. Br. 21, emphasis in original); *viz.*, labor organizations which are not affiliated with the same "national or international labor organization" (cf. § 10(c) of the NLRA, referred to at Pet. Br. n. 6). But the second clause of § 301(a) is not limited to agreements between "*unrelated*" labor organizations; the statutory language refers to contracts "between *any such* labor organizations" (emphasis added) (*viz.*, any "labor organization[s] representing employees in an industry affecting commerce as defined in this Act").

As respondent recognizes throughout its argument (with the exception of one sentence in one footnote),[3]

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[2] *Smith* v. *United Mine Workers of America*, 493 F.2d 1231 (10 Cir.) discussed at Pet. Br. 20-21, 22-23.

[3] At Resp. Br. 14-15, n. 10, it is declared to be "at least arguable that a union constitution is not a 'contract between labor organizations.'" on the ground that "in 1947 Congress considered a union constitution primarily to be a contract between members and their union and only secondarily to be a contract between affiliated bodies of a labor organization". Even if respondent's primary-secondary dichotomy were for some reason accepted, the conclusion drawn would not follow. A union constitution is a "contract between labor organizations" insofar as it is recognized to be even "secondarily" a "contract between affiliated bodies of a labor or-

when § 301(a) was enacted in 1947 a national constitution was understood to be a contract under both federal and state law. Moreover, it is common ground that the second clause of § 301(a), which is at issue here, was inserted in the Act without clarifying explanation. We believe that under "the fundamental canon of statutory construction, * * * that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning" (*Perrin* v. *United States*, 447 U.S. 37, 42), it follows that the term "contract" in that clause includes national constitutions.

1. Finding support for its view in neither the language nor the legislative history of the provision to be construed, respondent instead invokes "the principle of *stare decisis*" (Resp. Br. 9).

Respondent would sweep all the chessmen off the table by asserting that the present case is controlled by no less than three prior decisions of this Court: *Machinists* v. *Gonzales*, 356 U.S. 617 (1958); *Motor Coach Employees* v. *Lockridge*, 403 U.S. 273 (1971); and *NLRB* v. *Boeing Co.*, 412 U.S. 67 (1973). This assertion will doubtless

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ganization", where those affiliated bodies are themselves "labor organization".

It is unclear whether respondent denies that the *Coronado* cases recognized a union constitution to be a contract between labor organizations. Of course a union, like any group of individuals is, as Chief Justice Taft there stated, an "association of men." But the very point at issue in the passage quoted in Pet. Br. 16 was whether the International and its affiliated bodies, specifically its Districts, were to be treated as one organization, or an affiliated group of organizations. That question was answered by looking to the relationship between the International and Districts stated in the national constitution, just as the relationship between two corporations is determined by their articles of incorporation and supporting documents, which also govern the rights of shareholders.

come as a surprise to the Courts of Appeals which, while reaching divergent results, have uniformly considered the jurisdictional issue presented to be an open one in this Court.[4] Not one of the opinions of these courts so much as entertains the possibility that *Gonzales*, *Lockridge* or *Boeing* decide the present issue. Even the Tenth Circuit, which cited (and thereby declared its awareness of) *Gonzales* (see 493 F.2d at 1243, quoted at Pet. Br. 20-21) did not rely on that case as a precedent in holding that there is no jurisdiction over disputes between a parent organization and a local union.

This is not an instance where, as in Poe's *The Purloined Letter*, the true situation is so obvious that it has escaped everyone's attention. Rather, the true situation is that the decisions cited by the respondent do not address the present question at all, but differ from the present case in two distinct and independent decisive ways: None of the three cases so much as considered the question of whether a union constitution is a "contract" for purposes of § 301(a). Indeed, *Gonzales* and *Boeing* do not even mention § 301. And while *Lockridge* did discuss § 301(a) jurisdiction, the Court did not, as respondent avers, "consider[] and reject[] the argument, made here by the United Association, that Section 301 provides subject matter jurisdiction for suits alleging a breach of the union's constitution" (Resp. Br. 11); indeed, the Court did not address the second clause of § 301(a) at all. Rather, the Court reaffirmed that the first and more familiar clause of § 301(a) grants jurisdiction over suits by individual union members against their employers for breach of a promise in a collective

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[4] Nor did respondent in its Brief in Opposition to the Petition for Certiorari contend that the jurisdictional issue raised by the petition had already been decided by this Court; indeed, that brief did not mention any of the cases which respondent now says are controlling precedents.

bargaining agreement, and against the union for breach of the duty of fair representation. The arguments which the Court "considered and rejected" (*id.*) were that plaintiff Lockridge could obtain relief under either of those theories. (See 403 U.S. at 298-300.)

2. Respondent's argument from policy that our reading of § 301(a) is inconsistent with the congressional desire not to interfere with internal union affairs—like its argument from precedent—rests on the erroneous premise that § 301(a) jurisdiction over national constitutions would permit suits in federal courts over disputes concerning members' rights and obligations stated in such a constitution. Respondent itself reveals the flaw in that premise:

> Under [the contract] theory, the constitution contains a contract between the members *inter se*, between each member and the union *and* between the various bodies of the union. [Resp. Br. p. 14, n. 10 emphasis in original.][5]

In other words, normally the provisions of a national constitution create two distinct types of contracts—a contract between the national union and the local unions defining the rights and obligations of those organizations, and a contract between members and the national, defining the members' rights and obligations. Thus, in contrast with the normal collective bargaining agreement, which is a single contract betwen two parties (the employer and the union) which creates and defines both the parties' rights and obligations and the rights and obligations of third persons who are not parties to the contract (the employees), a national constitution is a complex of

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[5] In *Harris* v. *Geier*, 112 N.J. Eq. 99, 104-105, 164 A. 50, 52 cited by respondent, the Court said:

> The constitution and by-laws of the International Brotherhood constitute a contract between the members of Local 461 inter sese, and between them and the general body of membership of the brotherhood, and between the local and the joint council and other agencies of the brotherhood.

contracts between organizations *inter se* and between organizations and individuals. In this respect a national constitution is like the special collective bargaining situation noted in *J. I. Case Co.* v. *Labor Board*, 321 U.S. 332, 338: "Of course, where there is great variation in circumstances of employment or capacity of employees, it is possible for the collective bargain to prescribe only minimum rates or maximum hours or expressly to leave certain areas open to individual bargaining". Where that option is exercised, the employment relation is governed not by a single contract—the collective agreement between the employer and union—but by two contracts read in conjunction—the collective agreement and the contracts between the employer and the individual employee.

The language of § 301(a) thus demonstrates that the 1947 Congress had not reached the point of providing federal jurisdiction over suits for violation of a contract between an employer and an employee (which therefore remains governed by state law) or over suits for violation of contract between a labor organization and a member. Rather, § 301(a) is limited to suits based on contracts between an employer and a labor organization and between labor organizations. That is why the *Gonzales* Court stated that "[t]he protection of union members in their rights as members has not been undertaken by federal law, and indeed the assertion of any such power has been denied" (356 U.S. at 620), and the *Scofield* and *Boeing* Courts added that "the regulation of the relationship between union and employee [-member] is a contractual matter governed by local law." (394 U.S. 423 at 426, n. 3; 412 U.S. 67 at 76-77).

That, too, is why, as the Court noted in *NLRB* v. *Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 193, the Labor-Management Reporting and Disclosure Act of 1959 was "the first comprehensive regulation by Congress of internal union affairs." But the acknowledged fact (see Pet. Br. 23-25) that the Taft-Hartley Act was not a

comprehensive regulation of internal union affairs does not prove that the 1947 Congress left that subject untouched. That the Taft-Hartley Act began the process of federal regulation of internal union affairs is sufficiently shown, we believe, by the citation of §§ 9(f), (g), & (h), the provisions requiring unions to file with the National Labor Relations Board "non-communist" affidavits and certain financial information and this Court's construction of § 8(b)(1)(A) in *Scofield, supra,* and *NLRB* v. *Granite State Joint Board,* 409 U.S. 213, and of § 8(b)(1)(B) in *American Broadcasting Cos.* v. *Writers Guild,* 437 U.S. 411.

To be sure, as we recognized in our opening brief, "the reluctance of the Courts of Appeals to read § 301(a) as permitting interference in internal union affairs is not wholly unjustified." (Pet. Br. 23.) The Taft-Hartley Act's language, evolution and legislative history all show a disinclination by Congress to engage in substantive regulation of union affairs. But as we demonstrated in that brief, even as "Congress considered the judicial enforcement of contracts between employers and union to be entirely consistent with the right of these parties to make voluntary decisions as to the terms of these contracts", so too, "judicial enforcement under § 301(a) of union Constitutions * * * is entirely consistent with the Congressional judgment that union members should remain free to decide what the provisions of their Constitution shall be." (Pet. Br. 25.) The analysis which led to this conclusion is not mentioned, let alone rebutted in respondent's brief, although our opening brief squarely addressed the policy against regulation of internal affairs on which respondent essentially stakes its entire case.

In short, Congressional caution in regulating internal union affairs cannot be the basis for denying fair effect to what the language of § 301(a) shows Congress chose to do. The "overall legislative history of the Taft-Hartley

Act" (Resp. Br. 16) does counsel against reading § 301(a) expansively to add what is not there—federal jurisdiction over suits based on contracts between unions and members. But that history does not support reading § 301(a) so narrowly as to erase what is fairly encompassed in its terms—federal jurisdiction over suits based on contracts between labor organizations, whether those organizations are related or unrelated.

3. In rebutting respondent's overreading of the Congressional policy concerning internal union affairs, we do not wish to mislead in the opposite direction. In *Smith* v. *Evening News Assn.*, 371 U.S. 195, 200-201, the Court rejected the suggestion that "the word 'between' [in the first clause of § 301(a)] refers to 'suits', not 'contracts' and therefore only suits between unions and employers are within the purview of § 301", and held that "suits by employees for breach of a collective bargaining contract * * * arise [] under § 301." The *Smith* Court in reaching its conclusion noted, "[t]he rights of individual employees concerning rates of pay and conditions of employment are a major focus of the negotiation and administration of collective bargaining contracts" (*id.* at 200) and "[r]espondent does not argue here and we need not consider the question of federal law of whether [an employee] under this contract, has standing to sue for breach of the no-discrimination clause nor do we deal with the standing of other employees to sue upon other classes in other contracts" (*id.* at 201).[6] Thus it

[6] The result in *Smith* thus accords with the union's role as the employee's statutory representative in negotiating a collective agreement. It is also in accord with the common law, which through the third-party beneficiary doctrine, has long permitted non-signatories to sue on, as opposed to being sued on, a contract. Cf. *J.I. Case Co., supra*, 321 U.S. at 336. As of 1947 many state courts allowed employees to sue their employer to enforce individual rights under collective agreements. See the cases and other authorities cited in *Employees* v. *Westinghouse Corp.*, 348 U.S. 437, 460, n. 29 (Opinion of Frankfurter, J.).

is an open question whether, under the reading of § 301 we urge, suits by members on contracts between labor organizations would lie. But the resolution of that question one way or the other would not extend the substantive scope of the federal jurisdiction nor would it permit suits on the separate contracts between the members and the union.

4. (a) Respondent argues "[s]tate courts were generally available in 1947 to enforce the provisions of a union constitution. [Thus i]n contrast to collective bargaining agreements, the enforceability of a union constitution was 'not a part or parcel of the abuses against which' Section 301 was aimed". (Resp. Br. 15.) Respondent misunderstands those "abuses" and the state law in existence at that time. The section of the Senate Report entitled "Enforcement of Contract Responsibilities" goes on from the passage quoted by respondent to explain the exact scope of the problems:

> The initial obstacle in enforcing the terms of a collective agreement against a union which has breached its provisions is the difficulty of subjecting the union to process. The great majority of labor unions are unincorporated associations. At common law voluntary associations are not suable as such (*Wilson* v. *Airline Coal Company*, 215 Iowa 855; *Iron Molders' Union* v. *Allis-Chalmers Company*, C. C. A. 7, 166 F. 45). As a consequence the rule in most jurisdictions, in the absence of statute, is that unincorporated labor unions cannot be sued in their common name (*Grant* v. *Carpenters' District Council*, 322 Pa. St. 62). Accordingly, the difficulty or impossibility of enforcing the terms of a collective agreement in a suit at law against a union arises from the fact that each individual member of the union must be named and made a party to the suit.
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> * * * *
>
> Even where unions are suable, the union funds may not be reached for payment of damages and

> any judgments or decrees rendered against the association as an entity may be unenforceable. (See *Aalco Laundry Co. v. Landry Linen Union*, 115 S. W. 2d 89 Mo. App.) However, only where statutes provide for recognition of the legal status of associations do association funds become subject to judgments (*Deeney* v. *Hotel & Apt. Clerks' Union*, 134 P. 2d 328 (1943), California). [1 Leg. Hist. 422-423.]

The Report was careful not to overstate the dimensions of that difficulty:

> The laws of *many* States make it *difficult* to sue *effectively* and to *recover a judgment* against an unincorporated labor union. It is *difficult* to reach the funds of a union to satisfy a judgment against it. In *some* States it is necessary to serve *all* the members before an action can be maintained against the union. This is an almost impossible process. [1 Leg. Hist. 421, emphasis added.]

This reasoning applies fully to the subject covered by § 301(a)'s second clause, added to the provision thereafter. None of the cases cited by respondents suggest that employer suits against a union and suits by one union against another are legally distinct in the sense that the obstacles that "make it difficult [for employers] to sue effectively and to recover a judgment against an unincorporated labor union" did not apply to suits by a union.

Indeed, at least two of the suits respondent cites in the first column of its supplemental appendix were brought on both a collective bargaining agreement and a union constitution. (See *Locomotive Engineers* v. *Mills*, 43 Ari. 379, 31 P. 2d 971; *Lockwood* v. *Chitwood*, 89 P. 2d 951 (Okla.).) Moreover, others of those cases show that the difficulties of suing under a union constitution were the same as described in the Senate Report. (See *Simpson* v. *Locomotive Engineers*, 83 W. Va. 168, 98 S.E. 580, 584 (1919), *cert. denied* 250 U.S. 644.)

(b) In apparent recognition that national constitutions are by all odds the most important category of agreements between labor organizations, respondent seeks to provide soothing reassurance as to what its argument leaves of § 301(a)'s second clause:

> Whatever decision the Court renders in this case, Section 301(a) will continue to provide a jurisdictional basis for the enforcement of a variety of contracts or agreements between *unrelated* labor organizations: no raid agreements, jurisdictional dispute resolution agreements, merger or affiliation agreements, and promissory notes on loans between previously unrelated organizations. [Resp. Br. 21, footnotes omitted, emphasis in original.]

This suggested line of demarcation raises a more difficult question of principle than it solves.

National constitutions, in addition to their many other functions, are designed to achieve within the national union the same beneficial result brought about by no-raid agreements, jurisdictional dispute resolution agreements and merger agreements between unrelated unions. The point of the provisions of such constitutions establishing local union territorial and work jurisdictions and stating the criteria for creating new locals and merging existing ones is to provide a system of law to solve potential problems between the most likely class of disputants—local unions affiliated with a national union that represents the same or closely related groups of workers. This very case illustrates that point: the order of consolidation here allocated jurisdiction over plumbing and pipefitting work in the state of New Jersey between petitioner Local 14, representing plumbers, and Local 274, representing pipefitters. Moreover, whereas previously the various locals in that state had been confined in their geographical jurisdiction (for example, respondent had exclusive jurisdiction over work in Morris County, New Jersey, see Pet. Br. 5-6); one of the ob-

jections in its amended complaint is precisely that its members "will have to compete in the territory of Morris County with a large group of journeymen * * *" (J.A. 60, quoted at Pet. Br. 6).[7] See also the provision of Carpenters' constitution quoted in *Sidel*, n. 7, *infra*, 552 F.2d at 1256.

Thus, respondent attributes to Congress an entirely idiosyncratic intent—to cover in § 301(a) the relatively rare no-raid, jurisdictional dispute and merger agreements between unrelated labor organizations in order to remove the impediments Congress identified to enforcement of such agreements, while leaving untouched the multitude of agreements on the same subjects between related labor organizations embodied in national constitutions. To state respondent's point is to refute it. Moreover, in light of the role of national constitutions in ordering the relationships between national unions and their locals and between the affiliated locals, respondent's acknowledgement that § 301(a) does cover agreements on such subjects as raiding, jurisdiction and merger provides strong support for our contention that the section should be read to mean what it says—that the federal courts have jurisdiction over suits on contracts between labor organizations whether those organizations are related or unrelated.[8]

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[7] Likewise, at least four of the cases cited in Respondent's Brief involve an international union's determination of the respective work jurisdictions of its locals: *Local Union 1219, United Brotherhood of Carpenters and Joiners* v. *United Brotherhood of Carpenters and Joiners*, 493 F.2d 93 (1 Cir.); *Local Union No. 657, United Brotherhood of Carpenters and Joiners* v. *Sidell*, 552 F.2d 1250 (7 Cir.), *cert. denied*, 434 U.S. 862; *Studio Electrical Technicians Local 728* v. *International Photographers of the Motion Picture Industries Local 659*, 598 F.2d 551 (9 Cir.); *Dycus* v. *NLRB*, 615 F.2d 820 (9 Cir.).

[8] While two Circuits have concluded that the exercise of jurisdiction over suits between labor organizations on a union consti-

5. Contrary to Resp. Br. 16, n. 14, our opening brief did not suggest that the relationship between § 301 and § 8 be "ignore[d]"; we urged only that it not be misunderstood or exaggerated.[9] One of the cases cited, *id.*, *Howard Johnson Co.* v. *Hotel Employees*, 417 U.S. 249, 255-256, well illustrates their proper relationship: In fashioning the federal common law of labor agreements "from the policy of our national labor laws" (*Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 456), the courts must consider, *inter alia*, the policies of § 8 of the NLRA. Thus, in *Howard Johnson*, the Court effectuated the policy of the NLRA, embodied particularly in § 8(d),

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tution would require that suits by members for violation of the national constitution also be allowed (Resp. Br. 24) the Sixth Circuit has reached the opposite conclusion, expressly holding that it is not compelled by *Smith*. (*Trail* v. *International Brotherhood of Teamsters, Etc.*, 542 F.2d 961, 967 (6 Cir.).) That, as we show herein, is the correct view of § 301(a). We note also that neither of the Courts of Appeals whose decisions are cited at Resp. Br. 24 adopted the construction of § 301(a) for which respondent contends.

[9] None of the cases cited at Resp. Br. 16, n. 14 limit the scope of § 301 jurisdiction on the basis of the policies embodied in § 8; indeed, to do so would be contrary to the Congressional decision to leave the enforcement of contracts to the "usual process of the law" (see Pet. Br. 24) and to the decisions of this Court which, implementing that policy, have sustained jurisdiction under § 301 even in the face of potential overlap or conflict with the NLRB. That is the purport of the passage from *William E. Arnold Co.* v. *Carpenters*, 417 U.S. 12, 17-18, cited at Resp. Br. 16, n. 14 and the point that was decided in *Smith* v. *Evening News Assn.*, *supra*, 371 U.S. at 197-198 and in *Carey* v. *Westinghouse Corp.*, 375 U.S. 261, cited at Resp. Br. 26. Respondent's brief at pp. 25-26 thus draws from *Carey* the opposite conclusion from what that case actually decided when it argues that it would be paradoxical to allow jurisdiction over suits between affiliated labor organizations which have an impact on labor-management relations because the judiciary may not resolve matters subject to the NLRB's "superior authority" (cf. 375 U.S. at 272).

against governmental interference with the terms of agreements between employers and unions, see 417 U.S. at 254-256. As we observed at Pet. Br. 25, that policy does not call for a narrowing of the courts' undoubted jurisdiction under the first clause of § 301(a); rather, it militates against construing agreements (in the exercise of such jurisdiction) to create rights and obligations for which the parties did not bargain. (See also *Carbon Fuel Co.* v. *Mine Workers*, 444 U.S. 212, 218-219, cited *id.*) Applying the same approach in declaring the federal common law in the exercise of jurisdiction under the *second* clause of § 301(a) the courts would properly look to the policy embodied in the § 8(b)(1)(A) proviso against interference in internal union affairs. That policy would be furthered "by recognizing the principle of judicial deference to an interpretation fairly placed upon union rules by the union's authorized officials." (Resp. Br. 27.) Indeed, the federal courts (like the state courts whose decisions are cited in the third column of Respondent's Supplemental Appendix) are already following that principle, even without the need to invoke § 8(b)(1)(A)'s proviso.[10]

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[10] See, *e.g.*, *English* v. *Cunningham*, 282 F.2d 848, 850 (D.C. Cir.); *Vestal* v. *Hoffa*, 451 F.2d 706, 709 (6 Cir.), *cert. denied*, 406 U.S. 934; *Local Union No. 657, etc.* v. *Sidell*, 552 F.2d 1250, 1256-1257 (7 Cir.), *cert. denied*, 434 U.S. 862; *Stelling* v. *IBEW*, 587 F.2d 1379, 1388 (9 Cir.), *cert. denied*, 442 U.S. 944; *Drywall Tapers* v. *Operative Plasterers*, 601 F.2d 675, 679 (2 Cir.), *cert. denied*, 444 U.S. 1073.

6. For the foregoing reasons and those stated in our opening brief, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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